

Date of Decision: 2-2-96

Special Civil Application No.1264 of 1989
corrected

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.R.H. Mehta, learned counsel for the petitioner.
Mr.I.S. Supehia, learned counsel for the respondent.

Coram: (M.R. Calla, J.)

Dt: 2-2-96

ORAL JUDGMENT:

1. This Special Civil Application is directed against the Award dated 16-6-88 passed by the Central Government Industrial Tribunal at Ahmedabad in Reference (ITC) No.35 of 1987 whereby the relief of reinstatement with continuity of service and full backwages has been granted. The case of the petitioner is that the respondent-workman was engaged on a contract for water supply for fixed sum of Rs.250/- P.M. from 1-4-83 and he had worked as water supply contractor till 30-4-85, but was not an employee of the O.N.G.C. and when such service for water supply was not needed, the respondent's contract was disengaged. The respondent raised the

industrial dispute on the basis that in fact he was a waterman and an employee of the O.N.G.C. and he was being paid Rs.250/- P.M. and by 30-4-85 he had completed more than 240 days of service with the O.N.G.C. and yet his services have been terminated without complying with the requirements of S.25F of the Industrial Disputes Act, 1947. In want of the compliance of the conditions precedent and the pre-requisite as prescribed under S.25F, the retrenchment was unlawful and he was entitled to be reinstated with continuity and full backwages.

2. The Central Government Industrial Tribunal at Ahmedabad has recorded the findings of fact that the respondent-workman had worked for a period of more than 240 days and the requirements of S.25F of the Industrial Disputes Act had not been followed and whereas the respondent was not a contractor for water supply but an employee of the O.N.G.C as a waterman, it was a case of retrenchment given effect to without complying with the requirements of S.25F and hence the relief of reinstatement with continuity of service from 1-4-83 was granted and the relief of full backwages from the date he completed 240 days till his reinstatement and onwards was also granted.

3. In this Special Civil Application while issuing Rule on 1-5-89 the Division Bench passed an order granting stay against the Award of the Central Government Industrial Tribunal subject to the provisions of S.17B of the Industrial Disputes Act and Mr. Mehta appearing on behalf of the petitioner has submitted that since then the respondent-workman is being paid a sum of Rs.250/-P.M. regularly i.e. since 1-5-89. The respondent-workman filed an affidavit on 10-7-89 in this matter stating therein that during the pendency of the proceedings in the Industrial Tribunal, he had worked as a labourer in the O.N.G.C., Vadodara from 7-2-87 to 15-6-87 and, thereafter, he has not been gainfully employed.

4. Having heard learned counsel and having gone through the impugned award and the papers available on record, it has become clear that the findings of fact recorded by the Central Government Industrial Tribunal do not suffer from any infirmity and are not required to be disturbed and, therefore, so far as the question of reinstatement with continuity is concerned, the relief granted by the Industrial Tribunal does not warrant any interference. Thus, the question remains about backwages. The fact remains that the respondent-workman had worked for a short period from 1-4-83 to 30-4-85 only

as a waterman on a fixed pay of Rs.250/- P.M. and it is also clear that the respondent-workman did not hold any regular appointment on the established strength of O.N.G.C. while according to Mr.Mehta there are definite Rules and Regulations providing for the regular appointment after inviting applications and after offering opportunity of employment to all eligible candidates by way of issuing notice inviting applications and it can not be said that the respondent-workman could have claimed regular salary as his wages at par with other regularly appointed employees and, therefore, the direction to pay full backwages from the date he completed 240 days is absolutely without basis. In this view of the matter, the respondent-workman can face the regular selection as and when they are held so as to claim the regular pay scale as a part of the wages. Moreover, what should be his wages was not even the subject matter of the dispute which was referred. The dispute was only about the validity and justification for his termination on 30-4-85. It is also clear that so far as the wages is concerned, the respondent-workman is being paid a sum of Rs.250/- P.M. i.e. the amount which he was getting at the time of his termination in the year 1985 and he is in receipt of such amount regularly from May, 1989 i.e.the date on which the order was passed by the Division Bench of this Court. The question remains about the wages for the period from 1-5-85 to 30-4-89 i.e. a period of about four years. It was not the case of the respondent-workman before the Industrial Tribunal that he had made efforts for gainful employment during the relevant period and that he had remained totally unemployed during the period of enforced idleness despite his efforts. In the affidavit, which was filed by the respondent on 10-7-89 before this Court he has stated that he had worked as a labourer in the O.N.G.C., Vadodara from 7-2-87 to 15-6-87 and, thereafter, he has not been gainfully employed. In this affidavit he has not stated that he had made any efforts for employment else where. Admittedly he has remained in gainful employment from 7-2-87 to 15-6-87. The Award dated 16-6-88 was to be published on or before 6-8-88. Thus, the respondent-workman was definitely entitled to the wages with the expiry of one month's period from the date of the publication of the Award, which comes out to be not later than 6-9-88 and, therefore,the respondent-workman is also entitled to the wages from 6-9-88 to 30-4-89 in case the wages for this period have not been paid. Looking to the facts of this case in entirety I find that instead of granting the backwages for the entire period from May 1985, the respondent-workman should be held entitled to get the

backwages from 6-9-88 to 30-4-89 and for the period from 30-4-89 he is already getting a sum of Rs.250/- P.M. in terms of this Court's order i.e. the amount which he was getting per month at the time of his termination.

5. Thus, on the basis of the facts and circumstances of the case and the case of both the parties, this Special Civil Application is partly allowed as under:

(i) So far as the relief of reinstatement with continuity of service from 1-4-83 is concerned, the Award of the Central Government Industrial Tribunal is upheld and to that extent this Special Civil Application of the petitioner-Company is hereby dismissed.

(ii) So far as the question of backwages is concerned, the Award of the Central Government Industrial Tribunal stands modified as under:

(a) The petitioner shall pay the backwages to the respondent-workman for the period from 6-9-88 onwards till the date he is reinstated and in doing so, the petitioner-Company shall compute his wages, which he would have drawn had he not been terminated on 30-4-85 as if the termination order had never been passed and as a result of such computation if it is found that the respondent-workman would have received more than Rs.250/P.M., he shall be paid accordingly from 6-9-88 to 30-4-89 and the difference of wages for the period beyond 30-4-89 till the date of reinstatement shall also be made good to him.

Mr. Mehta submits that time upto 1-5-96 be granted to implement the directions as aforesaid. Accordingly time is granted upto 1-5-96.

Rule is made absolute in the terms as aforesaid with no order as to costs.